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 Before the
 Federal Communications Commission
 Washington, D.C. 20554

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In the Matter of)
)
 Amendment of Section 73.202(b),)
 Table of Allotments,) MB Docket No. 03-258
 FM Broadcast Stations.) RM-10833
 (Newcastle, Pine Haven, Warren AFB, Centennial,) RM-10864
 Casper, Wright, Douglas, and Kaycee, Wyoming,)
 Rapid City, South Dakota, and Gering and
 Scottsbluff, Nebraska)¹

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 23, 2004

Released: June 25, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it the *Notice of Proposed Rule Making*² issued at the request of Michael Radio Group ("Petitioner"). Petitioner filed comments. Tracy Broadcasting Corporation ("Tracy Broadcasting"), licensee of FM Stations KMOR, Channel 225C, Scottsbluff, Nebraska and KOZY-FM, Channel 239C3, Gering, Nebraska filed a counterproposal in response to the *Notice*. Petitioner filed reply comments in response to the counterproposal, to which Tracy Broadcasting filed responsive comments. New Generation Broadcasting ("New Generation"), license of FM Station KQRQ, Channel 222C1, Rapid City, South Dakota filed an Opposition to Tracy Broadcasting's counterproposal and a Contingent Notice of Dismissal of Objection. No other comments or counterproposals were received in this proceeding.

2. The *Notice* proposed the substitution of Channel 258C0 for Channel 258A at Newcastle, Wyoming and the modification of the license for FM Station KRKI accordingly. This requires the substitution of Channel 260A for vacant Channel 259A at Pine Haven, Wyoming. As indicated in the *Notice*, Channel 258C0 can be allotted to Newcastle, Wyoming, consistent with the minimum distance separation requirements of the Commission's rules provided there is a site restriction of 36.5 kilometers (22.7 miles) east of the community. The proposed reference coordinates for Channel 258C0 at Newcastle are 43-52-10 North Latitude and 103-45-04 West Longitude. Additionally, Channel 260A can be allotted to Pine Haven, consistent with the minimum distance separation requirement of the Commission's rules at city reference coordinates. The proposed reference coordinates for Channel 260A at Pine Haven are 44-21-28 North Latitude and 104-48-36 West Longitude. In response to the *Notice*, Petitioner filed comments, reiterating an intention to promptly construct the new facilities.

3. Tracy Broadcasting filed a counterproposal, requesting the substitution of Channel 226C1 for Channel 239C3 at Gering, Nebraska and modification of the license of Station KOZY-FM accordingly. This requires the substitution of Channel 225C2 for Channel 225C at Scottsbluff, Nebraska, the reallocation of Channel 225C2 from Scottsbluff to Francis E. Warren Air Force Base ("Warren AFB"), as its first local

¹ Warren AFB, Centennial, Casper, Wright, Douglas, and Kaycee, Wyoming, Rapid City, South Dakota, and Gering and Scottsbluff, Nebraska, have been added to the caption. See *Public Notice*, Report No. 2650 released March 11, 2004.

² See *Newcastle and Pine Haven, Wyoming*, 17 FCC Rcd 16350 (MB 2002) ("Notice").

aural transmission service, and the modification of its license for FM Station KMOR accordingly. To accommodate the reallocation proposal, Tracy Broadcasting proposes the substitution of Channel 228A for vacant Channel 224A at Centennial, Wyoming. The proposed substitution at Centennial requires the substitution of Channel 222C1 for vacant Channel 228C1 at Casper, Wyoming, which in turn, requires the substitution of Channel 224C1 for vacant Channel 223C1 at Douglas, Wyoming and the substitution of Channel 247C1 for vacant Channel 222C1 at Kaycee, Wyoming. In addition, the proposed substitution at Douglas requires the substitution of Channel 259A for vacant Channel 224A at Wright, Wyoming, which requires the substitution of Channel 260A or Channel 272A for vacant Channel 259A at Pine Haven, Wyoming. The proposed substitution at Wright conflicts with the underlying Channel 258C0 upgrade set forth in the *Notice*. To accommodate this upgrade, Tracy Broadcasting suggests the substitution of Channel 222C0 for proposed FM Station KRKI, Channel 258C0 upgrade at Newcastle, Wyoming. The proposed substitution at Newcastle requires the substitution of Channel 258C1 for Channel 222C1 at Rapid City, South Dakota and modification of the license of FM Station KQRQ accordingly.

4. In support of its counterproposal, Tracy Broadcasting states that the proposed upgrade of the facilities of Station KOZY-FM would increase its audience from 35,750 to 61,700. Additionally, the reallocation proposal would provide a first local service at Warren AFB and provide service to an additional 93,750 persons. Tracy Broadcasting states that Warren AFB is a census designated place with a 2000 U.S. Census population of 4,440 persons. Warren AFB was first established as an Army cavalry post in 1867, in which the 20th Air Force and the 90th Space Wing of the U.S. Air Force currently resides. Moreover, the 90th Space Wing employs approximately 3,650 military personnel and 600 civilian employees. Warren AFB has a post office with an associated zip code (82005); and its own aquatic center, auto skills center, bowling center, child development center, dining facility, golf club, teen center, public library, veterinary services and multiple fitness and sports facilities; and several restaurants, as well as a gas station convenience store, and a church. Warren AFB also has its own weekly newspaper, the *Warren Sentinel*. Warren AFB was placed on the National Register of Historic Places in 1975, and is the site of the F.E. Warren AFB Intercontinental Ballistic Missile and Heritage Museum. Tracy Broadcasting asserts that Warren AFB should be treated as a "community" deserving of a local FM channel allotment since the Commission has repeatedly held that military installations may serve as communities.³ Tracy Broadcasting states that the reallocation of Station KOZY-FM to Warren AFB would not deprive Scottsbluff of local service because Stations KOLT(AM), KNEB-AM, KNEB-FM, and KLJV(FM) currently serve Scottsbluff.

5. Petitioner filed responsive comments to the counterproposal stating that it could be effectuated with fewer channel substitutions. Specifically, the Petitioner asserts that Channel 248A could be substituted for vacant Channel 224A in lieu of proposed Channel 228A at Centennial so no further channel substitutions would be necessary to accommodate the counterproposal, thereby simplifying the proceeding. Tracy Broadcasting filed a response to Petitioner's reply comments stating that it has no objection to Petitioner's alternative proposal provided that it would not affect the "cut-off status of its counterproposal. New Generation filed an Opposition to the counterproposal, but later filed a Contingent Notice of Dismissal of Objection stating that it would have no objection to dismissing its Opposition if we adopted Petitioner's alternative proposal.

6. **Discussion.** The counterproposal is mutually exclusive with the *Notice's* proposal. Tracy Broadcasting's proposed alternative Channel 222C0 in lieu of Channel 258C0 at Newcastle removes this conflict. However, we find that the Petitioner's alternative proposal to allotment Channel 248A in lieu of Channel 228A at Centennial would better serve the public interest. In this instance, the use of Channel 248A in lieu of Channel 228A at Centennial would obviate the need for the substitution of channels for FM Stations KRKI and KQRQ and five vacant allotments located in Casper, Douglas, Wright, Kaycee, and Pine

³ Citing *Fort Rucker and Geneva, Alabama*, and *Blakely, Georgia*, 5 FCC Rcd 37 (MMB 1990) and *Johannesburg and Edwards, California*, 14 FCC Rcd 9557 (MMB 1999).

Haven, Wyoming that would be required to accommodate the allotment of Channel 228A at Centennial, if allotted. As such, we will proceed with the analysis of the counterproposal based on the substitution of Channel 248A for vacant Channel 224A at Centennial, Wyoming, to accommodate the substitution of Channel 225C2 for Channel 225C at Scottsbluff, Nebraska, the reallocation of Channel 225C2 from Scottsbluff to Francis E. Warren Air Force Base ("Warren AFB"), as its first local aural transmission service, and the modification of the license of Station KMOR(FM) accordingly, and grant the underlying proposal as originally filed.

7. Tracy Broadcasting filed the reallocation portion of its counterproposal pursuant to § 1.420(i) of the Commission's rules, which permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest in the proposed allotment.⁴ The proposed reallocation of Channel 225C2 at Warren AFB is mutually exclusive with the license site of FM Station KMOR, Channel 225C, Scottsbluff, Nebraska. When considering a reallocation proposal, a comparison is made between the existing allotment and the proposed allotment to determine whether the reallocation would result in a preferential arrangement of allotments based upon the FM Allotment priorities.⁵ The proposed reallocation of Channel 225C2 to Warren AFB triggers a priority (3) because it would provide a first local service, whereas the existing allotment at Scottsbluff results in a priority (4), other public interest matters, since Scottsbluff would retain local service from Stations KOLT(AM), KNEB-AM, KNEB-FM, and KLJV(FM). We find that the proposed reallocation of Channel 225C2 to Warren AFB would result in a preferential arrangement of allotments when compared to the existing allotment of Channel 225C at Scottsbluff.

8. A staff engineering analysis indicates that the proposed reallocation of Channel 225C2 to Warren AFB would result in a gain of service to 39,566 persons. The reallocation of Channel 225C2 would also result in a loss of service to 59,911 persons. In this regard, 48 persons in 225 square kilometers will receive two services, 2,284 persons in 2,469 square kilometers will receive four services, and an unpopulated area of 570 square kilometers will receive three services. Moreover, the engineering analysis determined that the substitution of Channel 226C1 for Channel 239C3 at Gering would result in a gain of service to 17,572 persons within 11,622 square kilometers. We recognize that the reallocation proposal results in loss area, but we find that the proposed reallocation of Channel 225C2 to Warren AFB coupled with the upgrade of Station KOZY(FM) at Gering serves the public interest considering the overall population net gain along with the fact that Warren AFB would receive a first local service. In addition, the staff analysis determined that the proposed reallocation of Channel 225C2 to Warren AFB, which is located within the Cheyenne, WY Urbanized Area, would cover a hundred percent of this urbanized area, whereas the existing allotment at Scottsbluff currently covers no urbanized area. Accordingly, we must consider whether Warren AFB is entitled to consideration as a first local service under *Tuck*.⁶

9. Warren AFB is entitled to consideration as a first local service. Under *Tuck*, we consider three criteria: (1) the signal population coverage; (2) the size and proximity of the proposed community to the central city of the urbanized area, and (3) the interdependence of the proposed community to the urbanized area.⁷ The interdependence factor is the most important criteria considered in making an

⁴ See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7394 (1990).

⁵ The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)], See *Revision of FM Assignment Policies and Procedures*, 90 FCC Rcd 88, 91 (1988).

⁶ See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1998) ("*Tuck*") and *RKO General*, 5 FCC Rcd 3222 (1990).

⁷ The Commission set forth eight factors in assessing the independence of a specified community: (1) the extent to which community residents work in the larger metropolitan area, rather than the specified community; (2) whether

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allotment decision involving the proposed reallocation of a station to an urbanized area. The 70 dBu contour signal of a Class C2 for FM Station KMOR at Warren AFB will invariably serve a large area. Warren AFB (population 4,440 persons) is located 4.3 miles from Cheyenne, Wyoming (population 53,011 persons). While the population of Warren AFB is only 8.4% of the total population of Cheyenne, we find that such a percentage has not precluded favorable consideration as a first local service.⁸ Warren AFB employs approximately 3,650 military personnel and 600 civilian employees. Warren AFB has its own weekly newspaper, *The Warren Sentinel*, a post office, and a separate zip code, 82005. Warren AFB has several commercial establishments. Governmental functions are performed by the United States Air Force. Warren AFB has its own public library. Therefore, based on the totality of the factors, we find that Warren AFB warrants a first local preference. Our view is supported by the fact that the Commission has held that military installations may serve as communities.⁹

10. Based on the foregoing, we will substitute Channel 226C1 for Channel 239C3 at Gering and modify the license of Station KOZY-FM accordingly. To accommodate the substitution, we will substitute Channel 225C2 for Channel 225C at Scottsbluff, reallocate Channel 225C2 from Scottsbluff to Warren AFB, as its first local aural transmission service, and modify the license of FM Station KMOR to conform to the modified allotment. To facilitate the reallocation proposal, we will also substitute Channel 248A for vacant Channel 224A at Centennial, Wyoming. Channel 226C1 can be allotted to Gering in compliance with the Commission's minimum distance separation requirements provided there is a site restriction of 30.3 kilometers (18.8 miles) east of the community.¹⁰ Channel 225C2 can be allotted to Warren AFB in compliance with the Commission's minimum distance separation requirements provided there is a site restriction of 12.5 kilometers (7.7 miles) south of the community.¹¹ Channel 248A can be allotted to Centennial in compliance with the Commission's minimum distance separation requirements provided there is a site restriction of 12.1 kilometers (7.5 miles) east of the community.¹²

11. The *Notice* proposed the substitution of Channel 258C0 for Channel 258A at Newcastle, Wyoming and the modification of the license for FM Station KRKI accordingly, which requires the substitution of Channel 260A for vacant Channel 259A at Pine Haven, Wyoming. A staff engineering analysis reveals that the substitution of Channel 258C0 at Newcastle would provide additional service to

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the smaller community has its own weekly newspaper or other media that cover the community's local needs and interests; (3) whether the community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facility and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools and libraries. The Commission has considered a community as independent when a majority of these factors demonstrate that the community is distinct from the urbanized area. See *Parker and St. Joe, Florida*, 11 FCC Rcd 1095 (M.M.Bur. 1996).

⁸ See *Ada, Newcastle and Watonaga, Oklahoma*, 11 FCC Rcd 16896 (MMB 1996); *Bay St. Louis and Poplarville, Mississippi*, 10 FCC Rcd 13144 (MMB 1995); *Scotland Neck and Pinetops, North Carolina*, 7 FCC Rcd 5113 (MMB 1992); and *D'Iberville and Wiggins, Mississippi*, 10 FCC Rcd 10796 (MMB 1995).

⁹ Id note 3.

¹⁰ The reference coordinates for Channel 226C1 at Gering are 41-54-26 North Latitude and 103-18-44 West Longitude.

¹¹ The reference coordinates for Channel 225C2 at Warren AFB are 41-02-38 North Latitude and 104-49-36 West Longitude.

¹² The reference coordinates for Channel 248A at Centennial are 41-19-03 North Latitude and 105-59-55 West Longitude.

148,839 persons. In this instance, we find that Petitioner's proposal is in the public interest. Therefore, we will substitute Channel 258C0 for Channel 258A at Newcastle and modify the license of FM Station KRKI accordingly. To accommodate the allotment at Newcastle, we will substitute Channel 260A for vacant Channel 259A at Pine Haven. Channel 258C0 can be allotted to Newcastle, Wyoming, consistent with the minimum distance separation requirements of the Commission's rules provided there is a site restriction 36.5 kilometers (22.7 miles) east of the community.¹³ Additionally, Channel 260A can be allotted to Pine Haven, consistent with the minimum distance separation requirement of the Commission's rules at city reference coordinates.¹⁴ As noted, Petitioner filed a minor change application, proposing the upgrade of Station KRKI to specify operation on Channel 258C0 in lieu of Channel 258A at Newcastle, Wyoming (BPH-20030919AAU), prior to the filing of its rulemaking petition. As such, we will refer this application to the Technical Processing Group located in the Audio Division for processing to implement this upgrade.

12. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's rules, IT IS ORDERED, That effective August 9, 2004, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Communities</u>	<u>Channel No.</u>
Centennial, Wyoming	248A
Gering, Nebraska	226C1
Newcastle, Wyoming	258C0
Pine Haven, Wyoming	260A
Scottsbluff, Nebraska	231C1
Warren AFB, Wyoming	225C2

13. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the authorization of Tracy Broadcasting Corporation for Station KOZY-FM, Channel 239C3, Gering, Nebraska, IS MODIFIED to specify operation on Channel 226C1 in lieu of Channel 239C3 at Gering, subject to the following conditions:

- (a) Within 90 days of the effective date of the *Order*, the licensee of Station KOZY-FM shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

¹³ The reference coordinates for Channel 258C0 at Newcastle are 43-52-10 North Latitude and 103-45-04 West Longitude.

¹⁴ The reference coordinates for Channel 260A at Pine Haven are 44-21-28 North Latitude and 104-48-36 West Longitude.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules, unless the proposed facilities are categorically excluded from environmental processing.

14. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the authorization of Tracy Broadcasting Corporation for Station KMOR(FM), Channel 225C, Scottsbluff, Nebraska, IS MODIFIED to specify operation on Channel 225C2 at Warren AFB, Wyoming in lieu of Channel 225C at Scottsbluff, subject to the following conditions:

(a) Within 90 days of the effective date of the *Order*, the licensee of Station KMOR(FM) shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules, unless the proposed facilities are categorically excluded from environmental processing.

15. Pursuant to Sections 1.1104(1)(k) and (3)(l) of the Commission's rules, any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, IF THE REQUEST IS GRANTED, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Michael Radio Group, licensee of FM Station KRKI, Channel 258A, Newcastle, Wyoming, is required to submit a rulemaking fee to effectuate the upgrade of license for Station KRKI(FM) to Channel 258C0 at Newcastle, Wyoming. Additionally, Tracy Broadcasting Corporation, licensee of Station KOZY-FM, Channel 239C3, Gering, Nebraska is required to submit a rulemaking fee in addition to the fee required for the application to effectuate the upgrade of license for Station KOZY-FM to Channel 226C1 at Gering, Nebraska at the time its Form 301 application is submitted. Tracy Broadcasting Corporation, licensee of FM Station KMOR, Channel 225C, Scottsbluff, Nebraska is also required to submit a rulemaking fee in addition to the fee required for the application to effectuate the community of license for FM Station KMOR to specify operation on Channel 225C2 at Warren AFB, Wyoming.

16. IT IS FURTHER ORDERED, That the aforementioned proceeding IS TERMINATED

17. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2180. For information regarding the processing of the minor change application filed by Michael Radio Group, BPH-20030319AAU, contact the Technical Processing Group, Audio Division, Media Bureau at (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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Media Bureau